



## United States Senate

WASHINGTON, DC 20510-0905

August 19, 2014

The Honorable Max Baucus  
Ambassador of the United States of America  
to the People's Republic of China  
United States Embassy  
No. 55 An Jia Lou Lu  
Beijing, China 100600

Dear Ambassador Baucus:

We write today to request your assistance in facilitating a resolution of claims against certain Chinese manufacturers, including state-owned entities, which have refused to participate in the legal process to help homeowners who were severely impacted by problem drywall manufactured by their firms.

From approximately 2004 to 2009, there was a housing boom in the United States that also coincided with the large-scale rebuilding efforts in the Gulf Coast area to recover from the impacts of Hurricanes Katrina and Rita. In response, a number of builders and contractors imported drywall manufactured in China to meet the demand. Some of this drywall caused problems shortly after it was installed. Many homeowners reported strong sulfur smells and metal corrosion in their homes. Other people reported health effects.

Following these reports, several Federal agencies, including the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), and the Department of Housing and Urban Development (HUD) looked into the problem drywall cases. They found that sulfur emissions from certain types of Chinese drywall were responsible for much of the corrosion and property damage suffered by homeowners. Regrettably, these agencies were not able to offer financial assistance to the impacted homeowners for this defective product.

In addition to the agency review, Congress also held several hearings on the matter. During these hearings, a number of homeowners testified about the impact that problem drywall had on their lives. These hearing also highlighted the fact that there were no mandatory product safety standards for drywall. As a result, Congress passed and the President signed into law the Drywall Safety Act of 2012 (Public Law 112-266), which mandated a new drywall safety standard to prevent future imports of defective drywall. Unfortunately, the Drywall Safety Act did not provide any compensation or financial assistance to impacted American homeowners.

Impacted homeowners then turned to U.S. courts, and filed suit against the responsible Chinese parties. Much of this litigation was consolidated into a Multi-District Litigation (MDL)



case in the United States District Court for the Eastern District of Louisiana. After an extensive period of discovery by the court, it was determined that two Chinese manufacturers and their affiliates were responsible for most of the problem drywall: 1) Knauf Plasterboard Tainjin and its associated affiliates (“Knauf Entities”); and 2) the Taishan Gypsum Company, Limited and associated affiliates (Tai’an Taishan, BNBM, BNBM Group, CNBM, and CNBM Group, collectively the “Taishan Entities”). We note that the Chinese State-Owned Assets Supervision and Acquisition Commission (SASAC), a special commission under the direct control of the State Council, owns and controls the Taishan Entities.

The Knauf Entities agreed to appear in court during the MDL and reached a global settlement that allowed many impacted homeowners with Knauf drywall to remediate their homes and get on with their lives. Several of the plaintiffs in the MDL served Taishan officials in China with notice of the lawsuit under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Convention), of which both the United States and China are signatories. Due to Taishan’s failure to appear in court in cases where they had been properly served under the Hague Convention, the judge in the MDL then entered default judgments against Taishan for damages resulting from the problem drywall.

Rather than pay these claims or accept jurisdiction, Taishan then retained counsel in the United States for the sole purpose of contesting the District Court’s jurisdiction and filed four appeals to the United States Court of Appeals for the Fifth Circuit. On January 28, 2014, a three-judge panel on the Fifth Circuit unanimously held that U.S. courts had proper jurisdiction over Taishan and could enforce the default judgment. On May 20, 2014, a different three-judge panel similarly affirmed the District Court’s remaining rulings in the other three appeals. In addition, Taishan let the time limit to file an appeal with the U.S. Supreme Court expire.

It was hoped that the end of these appeals would finally spur Taishan and its affiliates to do the right thing and reach a settlement for the thousands of Americans, including many Florida, Louisiana, and Virginia families, who have had their lives turned upside down by problem drywall. Unfortunately, they did not. Instead, Taishan fired its attorneys and told the District Court that they were walking away – and would no longer make any appearances in the Court.

On July 17, 2014, the District Court judge handling the MDL, the Honorable Judge Eldon Fallon, issued an Order holding Taishan in both civil and criminal contempt, and enjoined Taishan and any of its affiliates from conducting business in the United States until it participates in the judicial process. Judge Fallon also took the unusual step of sending copies of the contempt order to the U.S. Attorney General, the Secretary of State, and Members of Congress to express his frustration with how Taishan and the Chinese Government have handled this matter.

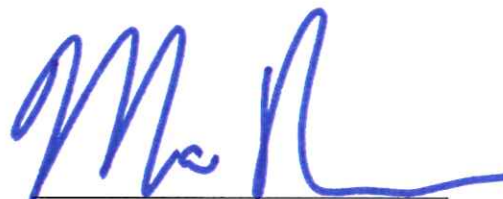
We hope you will take all possible steps to raise this violation of the Hague Convention and the failure of a Chinese state-owned entity to respect foreign court judgments with the highest levels of the Chinese Government. While this case is critical to the thousands of homeowners who are still waiting for a fair and just settlement, its overall implications are much broader. Put simply, it raises the question of whether the Chinese Government and Chinese companies will ever honor their legal and moral obligations under commercial contracts.

Thank you in advance for your continued service and assistance with this critical issue.

Sincerely,



Bill Nelson  
U.S. Senator



Marco Rubio  
U.S. Senator



Mary Landrieu  
U.S. Senator



David Vitter  
U.S. Senator



Mark Warner  
U.S. Senator